YIT SIN CO. PTE. LTD. v. UNITED OVERSEAS BANK LTD.

[O.C.J. (Rajah J.) September 23, 1980]
[Singapore — Suit No. 3651 of 1978]

Landlord and Tenant — Rent-controlled premises — Whether plaintiffs tenants or mere licensees — Principles applicable — Control of Rent Act (Cap. 266), s. 3.

The defendants in this case were owners of a warehouse known as No. 162 Havelock Road, Singapore which as rent-controlled. The plaintiffs claimed to be tenants of the warehouse as from January 1971 at the monthly rental of $3,000 per month payable in advance. They also claimed that in and from the month of August, 1974 the defendants had increased the rental of the warehouse to the sum of $5,000 per month.

The plaintiffs alleged that the standard rent for the warehouse was $2,000 per mensem as this was the rental the defendants had received for the warehouse prior to its letting by the defendants to the plaintiffs at $3,000 per mensem and claimed from the defendants the sum of $186,000 as overpayment of rents by virtue of section 3 of the Control of Rent Act (Cap. 266). The defendants denied this. They claimed that the plaintiffs were mere licensees. The defendants counterclaimed that the said licence was lawfully terminated on December 31, 1978 and that as from January 1, 1979 the plaintiffs were trespassers and so in wrongful occupation of the warehouse and claimed recovery of the warehouse.

The facts showed that the plaintiffs were in possession of the keys of the warehouse and had sole control of the letting of space within the warehouse and to whomsoever they chose. The plaintiffs had exclusive possession of the warehouse as from January 1, 1971.

Held, dismissing the defendants' counterclaim: (1) the plaintiffs had proved that prior to the plaintiffs moving into the warehouse both parties intended and agreed that the plaintiffs were to have the warehouse on a long term basis at a rental of $3,000 per mensem and that the form of words used in the immediate and subsequent documentation relating to the warehouse were in so far as the defendants were concerned solely for the purpose of getting over and trying to frustrate the provisions of the Control of Rent Act; as from January 1, 1971 the plaintiffs were therefore the tenants of the warehouse paying the agreed rental of $3,000 per mensem in advance;

(2) the raising of the rent from $3,000 per mensem to $5,000 per mensem as from August 1, 1978 was contrary to the provisions of the Rent Act; all overpayments made by the plaintiffs to the defendants to date over and above the $3,000 per mensem were recoverable from the defendants by virtue of section 3 of the Control of Rent Act.

Cases referred to:

(1) *Facchini* v. *Bryson* (1952) 1 T.L.R. 1386, 1389.

(2) *Indo-Australian Trading Co. Ltd.* v. *Krishnasamy* [1973] 1 M.L.J. 87.

CIVIL SUIT.

L.A.J. Smith for the plaintiffs.

Wong Peng Koon for the defendants.

Cur. Adv. Vult.

Rajah J.: The plaintiff company are a private limited company incorporated according to the laws of Singapore and have their registered office at 31 Hokien Street, Singapore 1. The defendants are a bank incorporated in Singapore and have their registered office at United Overseas Bank Building, No. 1, Bonham Street, Raffles Place, Singapore 1. They are the owners of a warehouse known as No. 162 Havelock Road, Singapore. It was not in dispute that these premises are subject to the provisions of the Control of Rent Act (Cap. 266) (the Rent Act).

The plaintiffs claimed to be tenants of the warehouse as from January 1, 1971 at the monthly rental of $3,000 per month payable in advance and that in and from the month of August 1974 the defendants had increased the rental of the warehouse to the sum of $5,000 per month.

The plaintiffs alleged that the standard rent for the warehouse was $2,000 per mensem as this was the rental the defendants had received for the warehouse prior to its letting by the defendants to the plaintiffs at $3,000 per mensem and claimed from the defendants the sum of $186,000 as overpayment of rents by virtue of section 3 of the Rent Act.

The defendants denied that the plaintiffs were their tenants and said that the defendants were mere licencees of the warehouse, paying therefor $3,000 per mensem as from January 1, 1971 and $5,000 per mensem as from August 1, 1974.

In their counterclaim against the plaintiffs, the defendants alleged (1) that the licence of the plaintiffs to use the warehouse was lawfully terminated on December 31, 1978 and (2) that as from January 1, 1979 the plaintiffs were trespassers and so in wrongful occupation of the warehouse and claimed recovery of the warehouse.

The plaintiffs joined issue with the defendants on their defence and in reply said (1) that they had been given exclusive possession of the warehouse, (2) that they had paid rent therefor and (3) that the real relationship of the defendants and the plaintiffs as between themselves was that of landlord and tenant respectively.

On the principles applicable in determining whether a transaction has brought about a tenancy or a licence I can do no better than quote from Lord Justice Denning (as he then was) in the case of *Facchini* v. *Bryson*.[1] (This passage was cited with approval by Choor Singh J. in the case of *Indo-Australian Trading Co. Ltd.* v. *Krishnasamy*[2]): —

> "We have had many cases lately where an occupier has been held to be a licensee and not a tenant. In addition to those which I have mentioned in *Errington* v. *Errington*, [1952] 1 The Times L.R. 231, we have recently had three more, *Gorham (Contractors) Ltd.* v. *Field* (Unreported), *Forman* v. *Rudd*, (Unreported) and *Cobb* v. *Lane*, [1952] 1 The Times L.R. 1037. In all the cases where an occupier has been held to be a licensee there has been something in the circumstances such as a family arrangement, an act of friendship or generosity, or such like, to negative any intention to create a tenancy. In such circumstances it would be obviously unjust to saddle the owner with a tenancy, with all the momentous consequences that that entails nowadays, when there was no intention to create a tenancy at all. In the present case, however, there are no special circumstances. It is a simple case where the employer let a man into occupation of a house in consequence of his employment at a weekly sum payable by him. The occupation has all the features of a service tenancy, and the parties cannot by the mere words of their contract turn it into something else. Their relationship is determined by the law and not by the label which they choose to put on it: *Commissioners of Customs and Excise* v. *Pools Finance*, [1952] 1 The Times L.R. 797. It is not necessary to go so far as to find the document a sham. It is simply a matter of finding the true relationship of the parties. It is most important that we should adhere to this principle, or else we might find all landlords granting licences and not tenancies, and we should make a hole in the Rent Acts through which could be driven — I will not in these days say a coach and four — but an articulated vehicle.

In this case the document was not a licence but a service tenancy. It contains words saying that it is not a tenancy, but they must be ignored. The landlord is not entitled to possession except in accordance with the Rent Acts."

The principles propounded are equally applicable here.

On the evidence before me I find (1) that the plaintiffs were in possession of the keys of the warehouse, (2) that they had sole control of the letting of space within the warehouse and to whomsoever they chose and (3) that tney had exclusive possession of the warehouse as from January 1, 1971.

On the disputed question of whether a tenancy was created or licence to occupy given in regard to the warehouse the vital evidence in my view is that of Seow Khoy Shiou (PW2) for the plaintiffs and Lee Kim Soon (DW2) for the defendants. As between these two witnesses I accept the evidence of the former. I found him to be a reliable witness. On the contrary I found Lee Kim Soon to be an unsatisfactory witness. I was satisfied on their evidence that prior to the plaintiffs moving into the warehouse both intended and agreed that the plaintiffs were to have the warehouse on a long term basis at a rental of $3,000 per mensem and that the form of words used in the immediate and subsequent documentation relating to the warehouse were in so far as the defendants were concerned solely for the purpose of getting over and trying to frustrate the provisions of the Rent Act. I therefore hold that as from January 1, 1971 the plaintiffs were tenants of the warehouse paying therefor to the defendants the agreed rental of $3,000 per mensem in advance.

On the question of whether on January 1, 1971 the standard rent of the warehouse was $2,000 per mensem the plaintiffs on the evidence they have been able to adduce on this matter have not satisfied me that this was so. I therefore hold that on the evidence now before me that the standard rental of the warehouse is $3,000 per mensem and that in consequence the raising of the rent from $3,000 per mensem to $5,000 per mensem as from August 1, 1978 was contrary to the provisions of the Rent Act and that all overpayments made by the plaintiffs to the defendants to date over and above the $3,000 per mensem are recoverable from the defendants by virtue of section 3 of the Rent Act. Consequent on these findings the defendants counterclaim for the recovery of the warehouse must necessarily be dismissed with costs.

I enter judgment for the plaintiffs for $104,000, being the sum agreed by the parties as having been overpaid and costs.

Order accordingly.

Solicitors: *L.A.J. Smith; Shook Lin & Bok.*

MATHEW BOHMAN v. JURONG TOWN CORPORATION

[A.C.J. (Choor Singh J.) October 2, 1980]
[Singapore — Civil Appeal No. 69 of 1980]

Landlord and Tenant — Claim for negligence against landlord — Tenant injured by fall over steps at premises — Duty of landlord to tenant.

Tort — Negligence — Tenant injured by fall over steps at premises — Whether landlord negligent — Factories Act (Cap. 123), s. 33(2) & (4) — Occupiers' Liability Act, 1957 (U.K.), s. 4(1).

Interpretation — "Steps" and "staircase" distinguished — Factories Act (Cap. 123), s. 33(1).

The appellant in this case occupied premises at Redhill Industrial Estate, Singapore as a tenant of the respondents. The appellant's unit was on the second floor of the buildings. There was a common loading platform on the ground floor of the building. The platform was raised a few feet from the ground level so that when a lorry was backed against it, the floor boards of the lorry matched the level of the platform. This was meant to facilitate the loading of goods off and on the lorry. The platform had a short flight of steps at one end.

On June 21, 1976 the appellant was standing on the edge of the platform, in a position immediately adjacent to the steps, and supervising the loading of goods into a lorry which had backed against the platform when he inadvertently stepped back on to the steps. He suffered a fall and sustained injuries. He claimed damages for personal injuries against the respondents. His claim for breach of statutory duty was dismissed by the learned District Judge. He appealed.

Held, dismissing the appeal: (1) the provisions of section 33(2) and (4) of the Factories Act on which the appellant relied had no application to the facts of this case; the steps were not an opening in the floor nor were they a staircase within the meaning of the sub-section which clearly contemplates a flight of steps leading from one storey to another storey;

(2) a landlord owes no duty to his tenant save and except to carry out repairs if he has so agreed at the time of the letting;

(3) the accident in this case was not due to disrepair of the common loading platform;

(4) there was no danger at all in the use of the platform because it was not in a dangerous state; the accident occurred due to a negligent act on the part of the appellant.

Case referred to:-

(1) *Cavalier* v. *Pope* [1906] A.C. 428.

CIVIL APPEAL.

Kan Ting Chin for the appellant.

Sachi Saurajen for the respondents.

Cur. Adv. Vult.

Choor Singh J.: The appellant Mathew Bohman occupies premises No. 3811D Jalan Bukit Merah, Redhill Industrial Estate, Singapore as tenant of the Jurong Town Corporation, the respondents in this appeal. The said premises are a factory unit within a flatted factory block known as Redhill Industrial Estate Block No. 1. There are 35 such units in this block. The appellant's unit is on the second floor of the building. He manufactures festive decorations and craft accessories. There is a common loading platform or loading bay on the ground floor of the building. This platform is raised a few feet from the ground level so that when a lorry is backed against it, the floor boards of the lorry match the level of the platform and this facilitates the loading of goods off and on the lorry. The platform has a short flight of steps